The Kentucky Commentator

University of Kentucky College of Law

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Law:

The Link Between Man And Freedom

By GOV. GEORGE ROMNEY

Editor's Note: Gov. Romney was recently elected to his third consecutive term as governor of Michigan. He is an often-mentioned possible Republican nominee for president in 1968 and has received many national and international awards. During his first term as governor he led a successful campaign for the adoption of a new constitution for his state.

President John F. Kennedy once said, "Law is the strongest link between man and freedom." You are the keepers of that link—for those who commit their lives to the law commit themselves to the preservation of man's freedom.

Ever since the American Revolution, American law has provided the essential framework of order and stability within which individual freedom flourishes—and it has protected the inalienable, God-given rights of individuals, even from the law itself.

America's revolutionary principles are unique and universal. They express man's deepest convictions about himself and his Creator, and his deepest yearnings for freedom and opportunity. We have translated our principles into living realities, through unique institutions and practices—legal, political, economic, social, and religious.

We succeeded largely because we found the way to manage and distribute power, so as to secure individual freedom and responsibility.

Power is simply the ability to tell others what to do, and make it stick. If you put too much power in too few hands, you get corruption and tyranny. On the other hand, if nobody has any real power, you get frustration and anarchy. But if you carefully divide power, limit it, and balance it, you get opportunity and freedom.

In America, we built an intricate and delicate system of limited, divided power—and it worked. It gave the individual room to breathe and move around—room for creativity, for dissent, for self-development—room for voluntary effort and cooperation—room for helping others—room for progress, and room for freedom. It made America the world's first truly open society and gave Americans opportunity and abundance unequalled in history.

But today, the divisions, restraints, and limitations which served us in the past are

George W. Romney

breaking down. More and more power is being lodged in fewer and fewer hands. In almost every aspect of American life, we are witnessing the growth of vast power concentrations—giants of public and private power which individuals are helpless to control.

In fundamental safeguard of individual freedom in America was the principle of limited government, which reserved powers and rights to the people. When a public problem needed solving, we expected the people to act, either individually or cooperatively through their voluntary, independent institutions and associations. Government's main job was to provide a climate in which people could do for themselves and others what needed to be done, and then to keep out of their way and let them do it. America flourished and grew great not so much by what government did as by what the people did themselves.

But in the rush of world events—industrialization, urbanization, war, depression, and the rest—massive new problems overtook us. Some were beyond the reach of individual or cooperative action. Others were so complex that it seemed easier to sit back and turn them over to the government than to get out and find voluntary solutions. More and more, we swallowed the myth that all it takes to solve any human or social problems is government and money.

But government and money are only partial answers to our needs. They cannot substitute for the voluntary efforts of individuals who care enough to get involved in helping others.

One of the greatest threats to freedom comes from those who have a fervent but false desire to help the unfortunate by making them dependent on government. The next easy step is their enslavement. And who is to say that the man who has been taught to expect nothing from life, beyond what is handed him by government, has not already been enslaved?

Excessive reliance on government and money is adding daily to the concentrated power of

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Professor Mooney:

UK College Of Law Stands Higher

"The University of Kentucky Law College stands much higher today in the law teaching world than it did four years ago," says Prof. Eugene Mooney who came to UK in the fall of 1963.

Prof. Mooney stressed two things which he called concrete examples to prove his point. One is the moving of the Journal of Legal Education from Duke University to the University and the second is initial visitor to fill the Prof. Roy Moreland Visiting Professorship, instigated upon the retirement of Prof. Moreland.

The moving of the Journal of Legal Education to Kentucky illustrated the high regard in the American Assn. of Law Schools that the UK College of Law has gained in the past few years, says Mooney. "The movement shows that UK is a complete peer with the good regional law schools—and one of them is Duke." Mooney states.

With the beginning of the visiting professor program, the University will be able to attract men of the highest calibre in the different fields of law, Mooney says. "This is borne out by the fact that our first visiting Professor will be Gerhard O. W. Mueller, internationally known Professor of Criminal Law at New York University School of Law."

In addition to these items, Mooney claims that much of the improvement in the law school has come from the students and the curriculum.

"There is no question about it, the law students are better today than ever before. They are better educated than when I was in law school and I can perceive a distinct improvement since the fall of 1963," Mooney declared.

"Every year they are better. This year's class is better than last year's and last year's was better than the one before it. The difference is, on a short-term basis infintestimal," he said.

Prof. Mooney cites higher entrance requirements as one of the things that have or will improve the caliber of law shcool students. He does, however, place certain reservations on the value of law school entrance examinations.

"We may tend to place an over-reliance on tests and the mathematical entrance criteria," he stated, "We may prefer those with higher educational backgrounds over certain persons who are highly motivated in certain legal areas such as public service.

According to Mooney the entrance requirements are quite clearly higher, but this so far may have had little effect on the improvement in the students at the Law College. "We just raised the requirements last year," he pointed out.

Since Prof. Mooney came here in 1963 there

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EDITORIALS

The first year in law school is often regarded as a trial period for the students. Everything hangs on attaining the sixty mark thus putting aside troubles at least for the summer months. However, learning is a two-way process. At some point an instructor should be evaluated on his performance—and this should be done by those who know him best. In other words, the student should be given the opportunity to judge the instructors.

There are definite reservations that should be placed on this especially in a Law School. The evaluation should be made after the first semester by the students who have been under instruction. This is bound to aid the students, the law school, and the instructor. Established instructors should not have to endure the humiliations that might crop up under this plan.

In this way incompetents could be weeded out before they attain tenure or some other semi-unimpeachable position. The weaknesses that exist in an instructor's methods could be pointed out and he would then know where he stands. No longer would he have to worry about whether or not he is getting through to the students.

It is an intolerable situation that allows an instructor to teach unchecked and does not attempt to determine if he is doing a suitable job.

Under this plan the Law School would retain only those instructors that are competent. It is obvious that the caliber of the faculty would rise accordingly. It is also obvious that the better the instructors, the more motivated the students will be.

For some reason student criticism of an instructor openly is something of a sacred cow. It is now time to take the sacredness out of this horned bovine and for the students to let their all-important voice be heard.

The KENTUCKY COMMENTATOR urges the Student Bar Association to undertake this project. It would not require an elaborate or difficult evaluating form. In fact there should be two things on it. One: a place to grade the instructor from zero to one hundred and Two: a place to point out his weaknesses IF he gets a grade above fifty.

Behind Locked Doors

That law students are studying behind locked doors may not come as a shock to many, since a popular method is to lock oneself in a room with books and a pot of coffee. But this is a completely different problem, and it should be remedied.

For those unfamiliar with the law library, both alumni and students, it is laid out on three floors. There are open stacks and study areas on each floor. The plan and operation are very satisfactory, with one exception.

There are ten doors, on the three floors, which lead to other parts of the building. Students are permitted to use only one of these, the main entrance on the middle floor. For those using a remote area of the library, it may mean a long walk, up or down a flight of stairs, to reach another destination, though it may only have been a few feet from where they were studying—through a closed door.

The theory behind the locked doors is that if they were opened, books would begin to disappear. However, anyone intent on taking a book need only walk by the check-out desk, next to the main entrance, where the attendant, if he happens to be at his post, will not even raise an eyebrow.

On one occasion, the long arm of the law has been seen forcibly preventing entry through one of these doors, though the student attempting to enter began the hassle. Surely, this type of conduct, and the need for it, is unnecessary.

Therefore, we recommend that these doors be opened for use. With the approach of finals, this will save time for the students and be of the utmost convenience. Until they are opened, this involuntary "brain trust" will continue.

The Kentucky Commentator

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Mitch McConnell

From The President

In a recent statement by the Association of American Colleges, an accurate definition of the student's role in the administration of his college was expressed.

> As constitutents of the academic community, students should be free, individually and collectively, to express their views on issues of institutional policy and on matters of general interest to the student body. The student body should have clearly defined means to participate in the formulation and application of regulations affecting student affairs. Student governments should lie protected from arbitrary intervention.

It may well be a truism that bears repetition that students are a *sine qua non* of any college. It would make sense, then, to consult students and to include their representatives, if for no other reason than to see if the students would be adversely affected by any decision.

It is contended by many that the student should be so committed to his studies that he simply would not have time to participate in the decision-making process. If this is in fact the case, then the faculty itself might not be properly involved, for their main concern should be preparation of material for consumption by these very students, leaving decisions to a managerial class.

The student in the college is removed by and large from the greater community and chooses to live in the isolated state for better or worse until degree time. This choice, however, need not remove him from involvement in the academic community in which he participates.

But some argue that the College is in no way a democratic community and should not pretend to be by having active student participation in what should be faculty affairs. This argument is manifestly falacious because it is based upon the questionable premise that the student has no valid, helpful opinions to express since he is just a neophyte pledging the professional fraternity.

One example of how the law student might be helpful may be in regard to the "publish of perish" madness. The teacher who is judged competent by his colleagues may not be so judged by his students. Obviously, the best researcher may not be the most capable instructor.

The student who points this out to a faculty tenure committee on which he sits might make the faculty aware of the value of the "classroom" professor in the learning process of the great majority of students. This majority does not participate in the extracurricula academic endeavors of the Law Journal or the Moot Court program and therefore depends heavily upon the classroom experience.

In professional schools even more than in undergraduate schools, it would seem important that students be involved in decision-making. The student in professional school is usually more mature, his admissions more selective, and is motivated more strongly than the average undergraduate. He will be a molder of the profession itself, and his involvement in this process should begin upon his admission to the study of that profession.

The areas of decision-making in which students of this law school should participate remain to be determined, but they should be defined at the earliest possible date through joint discussions between representatives of the faculty and the student body.

Professor Richardson Revising Work On Practice Methods

Prof. James R. Richardson is currently under contract to revise his Kentucky Practice Methods work. The original work was published in 1957. "The plan is to revise volume by volume," he said.

He is also working on a volume to be entitled Kentucky Law of Evidence which is expected to be published within the next 12-15 months. The W. H. Anderson Co. of Cincinnati will be the publisher.

The first volume of the revised Kentucky Practice Methods will appear sometime in April of 1967. It will be published as volumes three and three A. The manuscript is completed and has been sent to the West Publishing Co.

Prof. Richardson plans to revise volume four next. This will become four and four A. and it is expected to be out in the summer of 1968. Volume five will be revised and is expected to be published about one year after four and four A.

Besides these works which are now "in the mill," Prof. Richardson has written several other hardback publications in addition to numerous articles. Hardback publications include Modern Scientific Evidence and a book on Medical Legal Problems. He also has a three volume work on Florida Jury Instructions and a single volume dealing with establishing a law practice.

His last hardback publication was in Nov. of 1965 and is entitled Uniform Manual for Kentucky Traffic Courts.

Scientific Evidence for Police Officers, another of Prof. Richardson's works, deals in its early chapters with the currently very important matter of civil rights. Prof. Richardson said that he specifically emphasizes this problem.

Image And Income

The Problems Of A Modern Lawyer

Editor's Note:

The Kentucky State Bar Association has just authorized the Bureau of Business Research, College of Commerce, University of Kentucky to conduct a statewide survey of attorneys and to prepare a report on the economics of law practice.

By PROF. RICHARD D. GILLIAM

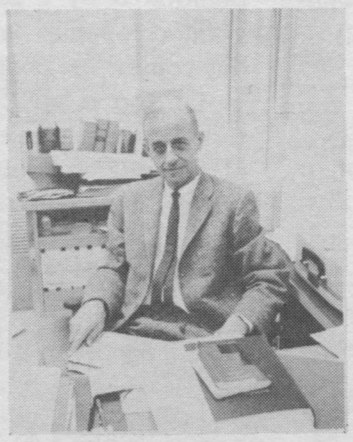
The practicing lawyer has two major problems in modern times and they are interrelated—the problem of income and the problem of the public image of the profession. As the value of the dollar has gone down and the desires of individuals with regard to amenities have gone up the lawyer has found himself a "second class citizen" among professional people, the managerial class and others whose education, abilities and occupation should entitle them to, at the least, upper-middle class incomes.

Until perhaps the middle of the nineteenth century the legal profession was a small reasonably cohesive group with good income, but largely unorganized and spiritually individualistic. The American Bar Association was organized in 1878. Prior to this there had been some good local bar associations but very little of permanence at state level. The movement for organization grew and the pattern now is reasonable good state bar association and a scattered pattern of excellent, good, poor or indifferent local organizations. All these organizations were voluntary and exclusive.

In 1921 North Dakota integrated its bar, by which is meant the license to practice automatically made a lawyer a member. The bar association became an organ of the government administering the profession as an agent of the highest appellate court, which, in degrees varying among the states, has the power to regulate the practice of law within the state.

In spite of all this the lawyer tends to remain an individualist. A rather small core of the membership of the association does the work and far too many members do not even cooperate. There are, of course, many exceptions, as, for example, the Fayette County Bar Association which is an active, cohesive, vigorous group.

The question of the public image of the lawyer is quite complex. Working in the adversory process the lawyer is continually making enemies. Few laymen understand the right and duty of a lawyer to act an counsel for an accused who is publicly believed to be guilty. The lawyer deals with a most complex language necessarily different from ordinary language, and unfortunately made less understandable by the inept lawyer. Many lawyers known to have done very bad things go without discipline. The basis of the lawyer's charge for his services is little understood, and this had tended to force the lawyer to work for less than a fair compensation.



PROF. GILLIAM

The question of the public image of the lawyer was exhaustively studied by Prentice-Hall for the Missouri State Bar Association a few years back and the report resulting will be available to the Bureau of Business Research.

In the matter of the economics of the profession studies have been made by the American Bar Association, reports of which are available. Studies have been made at local level by the Fayette County Bar Association to mention one. All these studies together point to the need for economy and efficiency in law office management, sound methods of cost accounting and attainment of some degree of uniformity in the schedules of charges made for services, the latter attained to some extent by the framing of minimum fee schedules and pressing for adherence there to.

The problem is first to find what in fact is the economic status of the bar of an area. At the outset it will be found to be low. Then the need is to find the causes. Following this, remedies must be found and their implementation by the entire bar secured.

The Illinois experience points the way. The result there was an immediate and amazing improvement in the economy of the bar. And a better public image seems to follow, although this does not eliminate all causes of objection to lawyers. But better understanding of the basis of the lawyer's charge for service does seem to result from some of the details in the campaign to raise the profession's income.

Alumni News

The first edition of the KENTUCKY COMMENTATOR received the following information on the alumni. While there was more response than this, many graduates did not include information that would be appropriate in the column. We do appreciate the letters commending the KENTUCKY COMMENTATOR and will heed any which we receive that offer criticism. We hope that in the immediate future more alumni will respond so that other graduates will know of your whereabouts and activities.

Robert Clark Stone, '41, has retired from the F.B.I. after 24 years and is Director of a Peace Officers' Training Council at Eastern Ky. U.

Albert W. Barber, '66, is associated with the firm of Wilson and Wilson in Owensboro.

William J. Townsend, who attended UK with the class of '59, and graduated elsewhere, is practicing law in Lumberton, North Carolina.

James A. Kegley, '66 has begun the practice of law with the firm of Gess, Mattingly, Saunier & Atchison in Lexington.

Joe C. Savage, '64, is associated with Wallace, Turner & Trigg in Lexington and is also teaching a medical-legal course in the law school.

Lawrence W. Grause, '66, has joined Charles H. Deters in the practice of law in Covington.

News From Around The Law School

Faculty Notes

Professor Garrett Flickenger will take a leave of absence during the next school year to pursue post-graduate study at Columbia University.

Prof. Frederick Whiteside will teach at Ohio State in the spring as a visiting professor.

Kentucky Law Journal

The annual COURT OF Appeals Review, the Law Journal's most important project, will be completed before the end of the year. Subscribers will receive their copy in January.

Under the new policy of competition candidacy 28 candidates from the freshman class will be selected after receipt of first semester grades. About 18 of these will be chosen for membership, which will be determined primarily by writing ability.

Moot Court

Mrs. Judi Smith, Mitch McConnell, and Frank Reaves, represented the law school in the regional meet of the National Moot Court competition in Lincoln, Neb. In the first round, they defeated William Mitchell College of Law, but were defeated in the second round by St. Louis, in a split decision.

The representatives were the outstanding participants from the law school, thus earning the right to advance to the regional meet.

Legal Aid

The Legal Aid society is expanding its services this year under the direction of Prof. Robert Lawson, faculty advisor and John Turner, third-year student, the student director. The participants provide assistance for local attorneys in investigation and research. Legal Aid devotes its attention to both civil and criminal cases, and provides students with an opportunity to sharpen their legal skills.

Legal Fraternities

Phi Alpha Delta recently held initiation and election. The new members are James Arehart, John Blevins, Nick Johnson, Louis Kawaja, and Robert Moody.

The election placed these students in office: Bill Barnett, Justice; Bob Carter Vice-justice; Nick Johnson, Clerk; Wayne Hougland, Treasurer.

Speaker's Forum

With the approach of finals, there will be no more speakers during this semester. A tentative program for the spring calls for talks by all the leading gubernatorial candidates.

Student Bar Association

The SBA sponsored a mock exam for all freshman. The purpose was to introduce the new students to the problems they will encounter and the solutions they will be expected to provide, in order that they might organize their studying appropriately.

Intramurals

The Legal Eagles, the Law School basketball team, are 2-1 after their first three games. They defeated the freshmen of Eastern Kentucky University 78-60. Larry Conley was high with 22. With Conley absent, the Transylvania varsity nipped the Eagles 88-82. John Adams, Dennis Bradley and Dave Yewell each added 20 in the losing cause. The law students came right back to beat the highly touted UK freshman team, 96-95. Conley again took game honors with 49 points.

Law: The Link Between Man And Freedom

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government, sapping the strength of our independent institutions, and undermining the ability of individuals to work out their own destiny, solve their own problems, and help others do the same.

At the same time, we are losing still another bulwark of individual freedom and divided power, through the decline of the states.

Strong and active states provide a needed counterweight to the centralized power of the federal government. They can keep government close to the people and meet local problems locally.

But state efforts, more and more, are being dwarfed by Washington. Many modern problems spill across state lines and must be dealt with by the federal government. And all too often, states lost power to Washington because they failed to meet their own responsibilities to their citizens.

Today, however, the drift of power from state capitols to Washington is being accellerated. Vast new federal programs are deliberately by-passing states. Federal funds and federal control are poured directly into cities and private organizations. Creative contributions which states could make in cooperative programs are spurned. And progressive states are penalized.

Decline Of States

States, which should be partners of the federal government, are becoming satellites instead. And as states decline in power, the strength of individual Americans declines as well, for they are losing one more vital tool of self-expression, self-determination, and self-government.

The menace of concentrated power is now confined to government. It infects our economy as well.

For a time, we achieved a reasonably equitable distribution of economic power, and everybody benefitted. When economic power became dangerously concentrated under the trusts and robber barons, we used the power of government to split up monopoly economic power among competing enterprises. Later, labor union power was sponsored to counter the growth of industrial power.

Technological Advances

These events, coupled with technological advances and the vision of industrial pioneers like the elder Henry Ford, resulted in more economic progress and economic freedom, shared among more people, than the world had every seen. The people as customers controlled the marketplace, calling the shots among competing enterprises; workers enjoyed higher wages through increased productivity; and bigger sales brought greater profits to the owners.

But we took a wrong turn. Our labor laws to promote desirable collective bargaining eventually went too far, by encouraging employers and unions in many basic industries to organize, on an industry-wide monopolistic basis for collective bargaining. Power concentrations grew. Today, employer combines and giant labor unions grab off most of the progress for themselves before it can reach the customer. Economically, the customer is the forgotten man.

Along with this concentration of private economic power came a corresponding and inevitable growth in federal economic power. When monopoly collective bargaining standoffs created national-emergency shutdowns, the White House stepped in to impose settlements. Depression and unemployment showed the need for federal action to stimulate the economy in bad times and moderate its excesses in good times.

But we have allowed our government to turn its back on sensible economic policies. It has pumped inflation into our economy with easy money, easy credit, big new spending, and tax cuts to stimulate a boom on top of a boom. It has stood by silently while inflationary wage increases were negotiated, and then sought to avoid the consequences of its own economic irresponsibility by using its vast economic power in an unauthorized manner to crack down on compensating price increases. Such crackdowns have served the political purpose of appearing to protect the public's economic interest.

Controlled Economy

The end result of such policies, if continued, will be a totally controlled economy, dominated by a giant government controlling giant companies and giant unions. When that day comes, the people will pay.

On top of all this, a new power concentration has been injected into the bloodstream of America. It could be fatal. It is the growing power of the military-industrial complex.

President Eisenhower warned Americans of this potential threat to freedom in his farewell address five years ago. He pointed to America's unquestioned need for military security, which for the first time in history had produced both "a permanent armaments industry of vast proportions" and "an immense military establishment." Their influence, he said, permeates our society. He urged vigilance to compel the military-industrial complex to pursue "peaceful methods and goals." He cautioned against its "acquisition of unwarranted influence, whether sought or unsought," and he warned, "The potential for the disasterous rise of misplaced power exists and will persist."

Our founding fathers gave us the principle of civilian supremacy. In the crises of the past, America has built up gigantic military and industrial war machines, and dismantled them when the danger was over. But in the continuing crisis of today, our war machine has become permanent. The cold war and periodic hot wars around the globe have given us no chance to prune it back to levels which we once considered normal. Much of our economy has grown dependent upon war and preparation for war.

We dare not underestimate the power of the military-industrial complex. We dare not underestimate the impact it can have on American thinking and American policy. We dare not underestimate the consequences—not only to our freedom, but to the peace and survival of mankind—if we were to allow it to dominate our lives, our domestic and foreign policies and programs, and our destinies.

Delegation Of Power

In all these areas—governmental, economic, military—growing concentrations of power are threatening to put a tragic ending to the American success story of individual opportunity, freedom, progress, and responsibility. An individual dwarfed by giants is an individual still—but he is not the free American that the pilgrims, patriots, and pioneers who made America expected to follow in their footsteps.

An individual, powerless to control his destiny in the face of huge aggregates of organized power, has two choices only: either to plod dutifully along in the shadow of one Big Brother or another, or to strike out aimlessly in protest against "the system" which he has no hope of mastering or significantly influencing.

Growth of bigness has been inevitable, because there was no other way to do the jobs that needed doing. But bigness does not require excess power and destruction of individuality and freedom. Much of today's dangerous power concentration came about by default or by design—because someone who had power failed to use it wisely or in time and therefore lost it, or because someone else who had some power wanted more and deliberately set out to get it.

The growth of concentrated power has made it infinitely more difficult and complex to maintain a meaningful role for the individual. But the very difficulty andcomplexity of the task makes it all the more imperative that we undertake it.

To be successful, we must move forward, under changing circumstances, with a modern application of the principles which we have proved in practice. We must restore the vital balance in our system, by shrinking over-concentrated power centers and revitalizing others which have begun to atrophy.

I can foresee two futures for America. The road to one is easy. We have already started down it. But it ends in tyranny and darkness.

The other road is long and hard, but at the end is the realization of America's bright promise of world-wide human fulfillment.

Americans must choose between them. I pray we will choose well.

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has been an extensive revision of the law school curriculum. In 1963 the curriculum here was undistinguishable from most other state law school curriculums, he says.

"A study demonstrated that the curriculum was substantially like those at five other state law schools from across the entire country," Mooney said, "and was quite unlike the curriculum at five regional law schools and five national law schools." The curriculum committee conducted extensive curriculum research during his first year here and issues a thick document concerning the curriculum.

"As a result of the curriculum study we drafted the whole curriculum into its present form. We changed the entire structure so that it is in line with the top regional and national schools," Prof. Mooney stated.

One of the more important changes was the reduction in the number of required courses. Until the revision practically all courses were required throughout the entire three years. Now only the first year and selected second year courses are required for graduation.

Added to the curriculum were the professional options—Moot Court, Law Journal, Legal Aid, and Practice Court. At least six new courses were added during the curriculum revision.

Prof. Mooney pointed out that nothing that was previously in the curriculum was eliminated with the exception of some specialty courses which were taught by persons who have left the UK law school. In the way of substantive courses, he says that new ones have been added to the schedule. He also says that the curriculum is on a par with the good regional law schools.

"Professionally speaking, the UK College of Law is on the rise," Prof. Mooney concluded. According to Mooney the facts obviously bear this out.

In last month's issue of the KENTUCKY COMMENTATOR Prof. Moreland voiced an opposite viewpoint.